

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2023-00189

October 18, 2023

DARLING'S
Complaint Against Versant Power
Related to Interconnection Agreement
(Ch. 324, § 15(C) Complaint)

ORDER

BARTLETT, Chair; SCULLY and GILBERT, Commissioners

I. SUMMARY

Through this Order, the Commission dismisses the Complaint, filed pursuant to Section 15(C) of Chapter 324 of the Commission's rules, by Darling's against Versant Power (Versant), without prejudice.

II. BACKGROUND

A. Procedural Background

On June 13, 2023, Darling's requested informal dispute resolution pursuant to Section 15(B) of Chapter 324, related to Versant's intention to disconnect Darling's 987.5 kW solar PV facility ("Facility") for a three-month period beginning in early to mid-August 2023 while Versant performs an overhaul of the Tibbetts Street Substation.

The parties did not resolve their dispute during the Section 15(B) informal dispute resolution process. On July 26, 2023, Darling's filed a Complaint, requesting that the Commission conduct an adjudicatory proceeding pursuant to Section 15(C) of Chapter 324 to resolve the dispute, including the adoption of expedited procedures to avoid Darling's being disconnected by Versant for three months beginning in August.

On July 27, 2023, the Hearing Examiners issued a Notice of Filing and Request for Response. On August 1, 2023, Versant filed its Initial Response to Darling's Complaint. On August 18, 2023, the Hearing Examiners issued a procedural order, requesting that Versant respond to specific questions. Versant filed its response to the August 18 procedural order on August 22, 2023.

On September 8, 2023, the Hearing Examiners issued a Recommended Decision. On September 15, 2023, Darling's and Versant filed Exceptions.

On October 2, 2023, oral argument was held on the topic of what relief could be granted.

B. Darling's Project

On October 25, 2019, Darling's submitted to Versant an interconnection application for a 1,375 kW Facility as a Level 2 project. In the spring of 2020, Darling's reduced the size of its facility to 987.5 kW. On February 13, 2020, Darling's signed a System Impact Study (SIS) agreement, and the Facility was studied as a Level 4 project. Darling's states that the SIS concluded on June 5, 2020.

On September 2, 2020, Darling's and Versant executed an IA. Darling's states that on July 30, 2021, Darling's received an updated estimate of costs of distribution upgrades. Darling's states that the estimated distribution upgrade costs included a specific line item for "substation upgrades and engineering" of \$45,190, \$192,216 for "POI protection, metering and engineering," and \$47,633 for "project support."

Darling's states that on September 20, 2021, Darling's paid Versant \$505,039 to cover the full value of the most recent estimates for distribution upgrades. Construction of the Facility commenced in late fall of 2021 and Darling's received a Certificate of Completion signed by Versant on August 18, 2022. The Facility began commercial operation on August 22, 2022.

Darling's states that on March 14, 2023, a representative of Versant met with Darling's to notify Darling's that Versant intended to perform work on the Tibbetts Street Substation. Darling's was told that, due to the work to be performed, Versant would be disconnecting the Facility beginning in August for a period of about three months. Darling's states that, during that meeting, Versant offered that Darling's could pay for a second SIS, at an estimated cost of \$15,000 to \$20,000, to study whether Darling's could remain interconnected to the temporary mobile substation while Versant worked on the Tibbetts Street Substation. Darling's states that the Versant representative indicated that if the SIS determined that additional equipment was necessary for Darling's to safely connect to the mobile substation, Darling's would be responsible for paying for such equipment.

After the March 14, 2023 meeting, Darling's states that it reached out to Versant by phone and email to better understand the situation. Specifically Darling's questioned the purpose of the second SIS, the expected cost of the study, why it was necessary for Darling's to pay for a second study when it had already paid once for Versant to study the Facility and its impacts on Versant's distribution system, and whether there were any other means to avoid a three-month disconnection of the Facility. Darling's states that while Versant would sometimes acknowledge Darling's inquiries, Darling's was unable to get Versant to answer substantive questions until more than three months after the March 14 meeting, when Darling's hired outside counsel.

Darling's states that it was not until informal dispute resolution began under Section 15(B) of Chapter 324, that Versant provided Darling's with answers to some of Darling's substantive questions. In Versant's June 20, 2023, response to Darling's

request for informal dispute resolution, Versant also indicated that conducting an SIS was no longer an option because there was insufficient time to do so.

C. Interconnection Agreement

Section 3.4 of the IA addresses “Temporary Disconnection.” Section 3.4.2 of the IA provides that:

Routine Maintenance, Construction, and Repair
T&D Utility may interrupt interconnection service or curtail the output of the Small Generator Facility and temporarily disconnect the Small Generator Facility from T&D Utility’s Electric Distribution System when necessary for routine maintenance, construction, and repairs on T&D Utility’s Electric Distribution System. T&D Utility shall provide the Interconnection Customer with five Business Days’ notice prior to such interruption. T&D Utility shall use reasonable efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

III. COMPLAINT

A. Darling’s Argument

1. “Routine” Maintenance Under the IA

Darling’s states that while Section 3.4 of the IA does allow Versant to disconnect the Darling’s Facility, it may do so only temporarily and in limited circumstances. Darling’s argues that the overhaul of the Tibbetts Street Substation resulting in a three-month disconnection for the Darling’s Facility is not allowed under the IA.

Darling’s states that the plain language of Section 3.4.2 of the IA affords Versant the ability to interrupt Darling’s interconnection service completely or curtail the output of the Facility for routine maintenance, when necessary, as long as it provides five Business Days’ notice or otherwise complies with Section 3.4.2. Darling’s states that the planned substation work is a major overhaul that is infrequently performed (on a 60-year interval) and involves the replacement of major substation components. Darling’s argues that this work cannot be considered “routine” maintenance.

Further, Darling’s states that “routine” maintenance suggests that the duration of any related disruption would be minimal, and that if a three-month disruption is allowed for “routine” maintenance, then there is likely no limit to how long Versant is able to disrupt the Facility under the IA.

2. “Necessary” Requirement

Darling’s also states that even if the work on the Tibbetts Street Substation could be considered “routine,” then Versant has the affirmative obligation under Section 3.4.2

to demonstrate that the complete disconnection of the Darling's Facility during that three-month period is "necessary." Darling's states that Versant has not performed any engineering analysis concluding that the complete disconnection of the Darling's Facility for three months is necessary. Darling's notes that Versant stated:

For the Tibbetts St. Substation, all the load can be distributed to a combination of other substations and the temporary mobile substation (to be installed at Tibbetts St.); however, standalone generation cannot be allowed to remain interconnected in this temporary configuration due to the fact that the impacts to the distribution grid are unknown, i.e., no SIS has been conducted. Versant's system is designed to deliver electricity for new or existing electrical load. Introduction of a generator (producing and exporting energy rather than consuming energy) – regardless of size – requires a complete evaluation, design, and study of the electric grid to ensure safe and reliable operation of the affected electric grid.

Versant's June 20, 2023 Response No. 5.

Darling's says that this statement shows that Versant has not conducted any analysis as to the necessity of a complete disconnection of the Facility (or a curtailment at less than the Facility's nameplate capacity) during the substation work. Darling's notes that Versant has performed an engineering analysis to determine which load can be served from the mobile substation at Tibbetts Street and which load can be served from other substations. However, Darling's states that Versant has not done so for the Darling's Facility.

Darling's also states that Versant failed to consider whether it is necessary to disconnect Darling's Facility completely, or whether a curtailment may be possible.

3. System Impact Study Requirement

Darling's argues that there is no authority to require Darling's to request and pay for a new SIS. Darling's states that Versant has cited no authority in Title 35-A, Chapter 324, or its own Terms and Conditions that authorize it to demand a new SIS for the Facility during the work on the substation.

Darling's states that it has already paid for an SIS and believes that any study or analysis of Versant's network to determine whether partial or complete disconnection of Darling's facility is necessary is the contractual responsibility of Versant, not Darling's.

Darling's states that although Versant uses the same form IA for Level 2 behind the meter generation and Level 2 stand-alone generation, Versant is not requiring any behind the meter generation to perform an SIS to remain interconnected to Versant's network during the three-month substation overhaul. Darling's argues that Versant has the same rights and obligations to all Level 2 interconnection customers, yet Versant is

treating Darling's less favorably than its other customers that are governed by the same agreement.

Darling's states that while Versant has indicated that it has been planning the Tibbetts Street Substation upgrade since 2021, Darling's was not made aware of this until 2023. Darling's states that Versant waited until mid-March of 2023 to raise the issue. Darling's was then presented with the choice of either being disconnected for three months or paying \$15,000 to \$20,000 for an SIS to determine whether continued interconnection would be possible. Further, Darling's states that during the spring and early summer of 2023, Darling's repeatedly contacted Versant to obtain a greater understanding as to why the SIS was necessary, when it would be conducted, how much it would cost, and whether there were other alternatives to avoid disconnection. Darling's states that when Versant finally responded to the requests for additional information, Versant indicated that conducting an SIS was no longer an option due to the timing of the substation work.

Darling's states that the IA imposes upon Versant affirmative obligations to minimize the effects of any maintenance activities (routine or otherwise) upon Darling's. Darling's notes that in Section 1.5 of the IA, titled "Responsibilities of the Parties," each party makes specific commitments to the other as to how they will construct, operate and maintain their respective facilities. Section 1.5.5 of the IA states that:

1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Exhibits to this Agreement and shall do so in a manner as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the other party.

Darling's argues that Versant has not met these obligations because Versant has failed to operate "in a manner as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing" Darling's, as required under Section 1.5.5 of the IA. Darling's further argues that Versant performing the necessary engineering analysis will not prejudice Versant because the current time schedule commits Versant to performing the substation overhaul during the height of the storm season.

B. Versant's Initial Response to Darling's Complaint

In its Response to Darling's Complaint, Versant states that the work at the Tibbetts Street Substation will include the installation of a new transformer and high-side circuit breaker. Versant states that such replacements are "routine" and are part of an established program and practice to maintain this asset class. Versant states that it is replacing the Tibbetts Street Substation transformer prior to failure in accordance with its regular and established procedure, as reflected in the Asset Management Program's and Versant's historical asset management practices, and that the transformer was identified for replacement in 2021.

In response to Darling's allegation that disconnection has not been shown to be necessary, Versant states that it cannot keep the Facility connected while the work proceeds without an SIS to model and understand the effects on Versant's system of maintaining interconnection through the mobile substation. Versant states that there is a distinction between load (retail, commercial, and industrial energy consumers) and generators (energy producers).

Versant states that for the Tibbetts Street Substation, all of the load can be distributed to a combination of other substations and the temporary mobile substation. However, Versant states, standalone generation cannot be allowed to remain interconnected in the temporary configuration because no SIS has been conducted. Versant states that its system is designed to deliver electricity for new or existing electrical load. However, introduction of a generator (producing and exporting energy rather than consuming energy) requires an evaluation, design, and study of the electric grid to ensure its continued safe and reliable operation.

Additionally, Versant states that the original SIS that Darling's paid for did not study alternative configurations, such as connection to a temporary substation. As noted in the System Upgrade and O&M Charge Estimates document that Versant provided to Darling's on July 30, 2021, the original SIS "was conducted for normal circuit operation." Further, the document stated that "[g]enerator operation is prohibited when the substation or feeders are connected in alternate configurations, including installation of the mobile substation."

Versant states that if Darling's doesn't pay for the SIS, the cost of an SIS would be borne by ratepayers. Versant states that Darling's does not explain why other customers should have to pay for an SIS to keep Darling's interconnected.

Versant states that under the IA, Versant is only required to provide Darling's five days' notice prior to disconnection. Versant states that it provided Darling's notice approximately five months before the planned work. Versant states that it offered Darling's the potential option of completing an SIS, at Darling's cost, to determine whether it would be feasible for Darling's to remain interconnected in a temporary configuration and the cost of doing so. Versant states that Darling's objected to paying for the SIS, taking the position that Versant was obligated to cover the costs of the SIS.

Versant states that Darling's interpretation of the IA is illogical and would lead to absurd results. Versant states that Darling's alleges that the IA would permit temporary disconnection of a generating facility for certain capital work but not for other, major capital projects – even those necessary to ensure the continued safe and reliable operation of the electric grid. Versant states that Darling's is contending that there is a vague, undefined category of capital work – which includes necessary, planned substation rebuilds – for which no provision of the IA would permit Darling's to be temporary disconnected.

Ultimately, Versant states that there is no obligation in the IA or in prudent utility practices that requires Versant to contract out for a full SIS and implement costly measures – all at the expense of Versant’s customers – solely to protect Darling’s financial interest during capital work.

C. Versant’s Response to Procedural Order

On August 22, 2023, in response to a procedural order issued by the Hearing Examiners, Versant stated that Darling’s required a second SIS because it is a Level 4 project, not simply because it introduces energy onto the grid. Versant stated that there are behind-the-meter projects connected at the Tibbetts Street Substation, that may introduce energy onto the grid, the Darling’s Facility is the only Level 4 project and the only standalone project interconnected to the Tibbetts Street Substation.

D. Start of Work

At oral argument on October 2, 2023, Versant confirmed that work on the Tibbetts Street Substation began on August 28, 2023, and would take three months to complete.

IV. DISCUSSION AND DECISION

The dispute between Darling’s and Versant is governed by the terms of the IA. Section 3.4.2 of the IA provides that Versant may, on five business days’ notice, “interrupt interconnection service or curtail the output of the [Facility]. . . when necessary for routine maintenance, construction, and repairs” on Versant’s system. Section 1.5.5 of the IA states that: “Each Party shall operate, maintain, repair, and inspect [its facilities] . . . in a manner as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the other party.”

Thus, the question presented to the Commission through the Ch. 324, § 15(C) Complaint is whether the IA permits Versant to disconnect Darling’s Facility to rebuild the Tibbetts Street Substation and, if so, whether Versant is required to conduct, at its own expense, the necessary engineering analysis to determine whether the Facility could operate at some level while the temporary substation is in place.

However, while this Complaint was pending before the Commission, Versant disconnected the Darling’s Facility in August 2023 to begin work on the Tibbetts Street Substation, which Versant has indicated will be completed in November. Because Darling’s is now disconnected, the Commission cannot grant relief because there is no longer an opportunity to conduct the necessary engineering analysis to determine if the Darling’s Facility could have stayed online. Additionally, if Versant did in fact breach the terms of the IA – a conclusion the Commission is not reaching in this Order - the Commission does not have the jurisdiction to award compensatory damages.

While the Commission does not reach a decision on the merits, there are several facts in this Complaint that concern the Commission. While Versant indicated that the Tibbetts Street Substation was identified for replacement in 2021, Versant did not advise Darling's of the impending rebuild until March 2023. Darling's engaged in an almost three year long process with Versant to study and interconnect its Facility, yet Versant never advised Darling's that shortly after the interconnection was in place and the Facility was operation, it would be disconnected for three months.

Additionally, Versant took steps and incurred costs to ensure that all of the load served by the Tibbetts Street Substation would continue to have service but took no steps to determine whether the Darling's Facility could remain in service or possibly be curtailed during the substation rebuild.

Nonetheless, the Commission does not reach a decision on the merits of this dispute because there is no relief that the Commission can grant to address this Complaint. For this reason, the Commission dismisses Darling's Complaint without prejudice.

Dated at Hallowell, Maine this 18th day of October 2023

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear,
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Scully
 Gilbert

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.